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Notice of Allowability	Application No.	Applicant(s)	Applicant(s)	
	09/515,369	9 FISHER ET AL.		
	Examiner	Art Unit		
	Daniel M Sullivan	1636		
The MAILING DATE of this communication appeal claims being allowable, PROSECUTION ON THE MERITS IS herewith (or previously mailed), a Notice of Allowance (PTOL-85) NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT R of the Office or upon petition by the applicant. See 37 CFR 1.313	(OR REMAINS) CLOSED in or other appropriate commulGHTS. This application is s	this application. If not including this application. If not including the industrial ind	ded e course. <b>THIS</b>	
1. This communication is responsive to <i>the amendment and</i>	request for continued examii	nation filed 18 March 2004.		
2. The allowed claim(s) is/are <u>1-9 and 14-19</u> .				
3. $\boxtimes$ The drawings filed on <u>05 December 2003</u> are accepted by	the Examiner.			
<ul> <li>4. ☐ Acknowledgment is made of a claim for foreign priority use</li> <li>a) ☐ All b) ☐ Some* c) ☐ None of the:</li> <li>1. ☐ Certified copies of the priority documents have</li> </ul>	e been received.	`,		
2. Certified copies of the priority documents have	• •			
3. Copies of the certified copies of the priority do	cuments have been received	d in this national stage applica	ation from the	
International Bureau (PCT Rule 17.2(a)).  * Certified copies not received:				
Applicant has THREE MONTHS FROM THE "MAILING DATE" noted below. Failure to timely comply will result in ABANDONN THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.	of this communication to file IENT of this application.	a reply complying with the re	equirements	
5. A SUBSTITUTE OATH OR DECLARATION must be subminFORMAL PATENT APPLICATION (PTO-152) which give	nitted. Note the attached EXA es reason(s) why the oath or	AMINER'S AMENDMENT or I declaration is deficient.	NOTICE OF	
<ul> <li>6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must</li> <li>(a) ☐ including changes required by the Notice of Draftspers</li> <li>1) ☐ hereto or 2) ☐ to Paper No./Mail Date</li> <li>(b) ☐ including changes required by the attached Examiner'</li> </ul>	son's Patent Drawing Review			
Paper No./Mail Date  Identifying indicia such as the application number (see 37 CFR 1			a hack) of	
each sheet. Replacement sheet(s) should be labeled as such in t	he header according to 37 CF	R 1.121(d).	c backy of	
<ol> <li>DEPOSIT OF and/or INFORMATION about the depo attached Examiner's comment regarding REQUIREMENT</li> </ol>	sit of BIOLOGICAL MATE FOR THE DEPOSIT OF BIO	ERIAL must be submitted. DLOGICAL MATERIAL.	Note the	
Attachment(s)  1.  Notice of References Cited (PTO-892)	5.  Notice of Inf	ormal Patent Application (PT	<sup>-</sup> O-152)	
2. Notice of Draftperson's Patent Drawing Review (PTO-948)		ımmary (PTO-413), Mail Date		
<ol> <li>Information Disclosure Statements (PTO-1449 or PTO/SB/0 Paper No./Mail Date</li> </ol>		Amendment/Comment		
4. Examiner's Comment Regarding Requirement for Deposit of Biological Material	8. ☐ Examiner's 9. ☐ Other	Statement of Reasons for All	owance	
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## **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Lisa Kole on 22 April 2004.

The application has been amended as follows:

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## In the specification:

Replace the abstract with the following paragraph:

-- The present invention provides for an isolated Mda-7 promoter capable of directing transcription of a heterologous coding sequence positioned downstream therefrom, wherein the promoter is selected from the group consisting of: (a) a promoter comprising the nucleotide sequence shown in SEQ ID NO:1; (b) a promoter comprising a nucleotide sequence functionally equivalent to the nucleotide sequence shown in SEQ ID NO: 1; and (c) a promoter comprising a nucleotide sequence that hybridizes to a sequence complementary to the promoter of (a) or (b) in a Southern hybridization reaction performed under stringent conditions. The invention provides for a host cell comprising the recombinant expression construct as described herein. The invention provides for a method for expressing foreign DNA in a host cell comprising: introducing into the host cell a gene transfer vector comprising an Mda-7 promoter nucleotide sequence operably linked to a foreign DNA encoding a desired polypeptide or RNA, wherein said foreign DNA is expressed. The invention further provides for a method for treating cancer in a subject suffering therefrom which comprises administering to the subject an effective amount of a pharmaceutical composition which comprises a recombinant expression construct comprising: (a) a nucleic acid molecule that encodes a selected polypeptide; and (b) an Mda-7 promoter nucleotide sequence operably linked to the nucleic acid molecule of element (a), wherein the coding sequence will be transcribed and translated when in a host cell to produce the selected polypeptide, and the Mda-7 promoter is heterologous to the coding-sequence and pharmaceutically acceptable carrier.--

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In the claims:

Replace claim 7 with the following:

--7. The recombinant expression construct of claim 6, wherein the tumor suppressor polypeptide

is selected from the group consisting of p21, retinoblastoma protein or and p53.--

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Daniel M Sullivan whose telephone number is 571-272-0779.

The examiner can normally be reached on Monday through Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Remy Yucel, Ph.D. can be reached on 571-272-0781. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**DMS** 

PRIMARY EXAMINER